

Calendar No. 278

109TH CONGRESS
1ST SESSION**S. 1699**

To amend title 18, United States Code, to provide criminal penalties for trafficking in counterfeit marks.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 14, 2005

Mr. SPECTER (for himself, Mr. LEAHY, Mr. HATCH, Mr. DeWINE, Mr. CORNYN, Mr. BROWNBACK, Mr. VOINOVICH, Mr. FEINGOLD, Mr. LEVIN, Mr. BAYH, Mr. REED, Ms. STABENOW, Mr. DURBIN, Mr. KYL, Mr. COBURN, Mrs. FEINSTEIN, and Mr. ALEXANDER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

NOVEMBER 3, 2005

Reported by Mr. SPECTER, with an amendment

[Insert the part printed in italic]

A BILL

To amend title 18, United States Code, to provide criminal penalties for trafficking in counterfeit marks.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; FINDINGS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Stop Counterfeiting in Manufactured Goods Act”.

1 (b) FINDINGS.—The Congress finds that—

2 (1) the United States economy is losing millions
3 of dollars in tax revenue and tens of thousands of
4 jobs because of the manufacture, distribution, and
5 sale of counterfeit goods;

6 (2) the Bureau of Customs and Border Protec-
7 tion estimates that counterfeiting costs the United
8 States \$200 billion annually;

9 (3) counterfeit automobile parts, including
10 brake pads, cost the auto industry alone billions of
11 dollars in lost sales each year;

12 (4) counterfeit products have invaded numerous
13 industries, including those producing auto parts,
14 electrical appliances, medicines, tools, toys, office
15 equipment, clothing, and many other products;

16 (5) ties have been established between counter-
17 feiting and terrorist organizations that use the sale
18 of counterfeit goods to raise and launder money;

19 (6) ongoing counterfeiting of manufactured
20 goods poses a widespread threat to public health and
21 safety; and

22 (7) strong domestic criminal remedies against
23 counterfeiting will permit the United States to seek
24 stronger anticounterfeiting provisions in bilateral
25 and international agreements with trading partners.

1 **SEC. 2. TRAFFICKING IN COUNTERFEIT MARKS.**

2 Section 2320 of title 18, United States Code, is
3 amended as follows:

4 (1) Subsection (a) is amended by inserting after
5 “such goods or services” the following: “, or inten-
6 tionally traffics or attempts to traffic in labels,
7 patches, stickers, wrappers, badges, emblems, medal-
8 lions, charms, boxes, containers, cans, cases,
9 hangtags, documentation, or packaging of any type
10 or nature, knowing that a counterfeit mark has been
11 applied thereto, the use of which is likely to cause
12 confusion, to cause mistake, or to deceive,”.

13 (2) Subsection (b) is amended to read as fol-
14 lows:

15 “(b)(1) The following property shall be subject to for-
16 feiture to the United States and no property right shall
17 exist in such property:

18 “(A) Any article bearing or consisting of a
19 counterfeit mark used in committing a violation of
20 subsection (a).

21 “(B) Any property used, in any manner or part,
22 to commit or to facilitate the commission of a viola-
23 tion of subsection (a).

24 “(2) The provisions of chapter 46 of this title relating
25 to civil forfeitures, *including section 983 of this title*, shall
26 extend to any seizure or civil forfeiture under this section.

1 At the conclusion of the forfeiture proceedings, the court,
2 unless otherwise requested by an agency of the United
3 States, shall order that any forfeited article bearing or
4 consisting of a counterfeit mark be destroyed or otherwise
5 disposed of according to law.

6 “(3)(A) The court, in imposing sentence on a person
7 convicted of an offense under this section, shall order, in
8 addition to any other sentence imposed, that the person
9 forfeit to the United States—

10 “(i) any property constituting or derived from
11 any proceeds the person obtained, directly or indi-
12 rectly, as the result of the offense;

13 “(ii) any of the person’s property used, or in-
14 tended to be used, in any manner or part, to com-
15 mit, facilitate, aid, or abet the commission of the of-
16 fense; and

17 “(iii) any article that bears or consists of a
18 counterfeit mark used in committing the offense.

19 “(B) The forfeiture of property under subparagraph
20 (A), including any seizure and disposition of the property
21 and any related judicial or administrative proceeding, shall
22 be governed by the procedures set forth in section 413
23 of the Comprehensive Drug Abuse Prevention and Control
24 Act of 1970 (21 U.S.C. 853), other than subsection (d)
25 of that section. Notwithstanding section 413(h) of that

1 Act, at the conclusion of the forfeiture proceedings, the
 2 court shall order that any forfeited article or component
 3 of an article bearing or consisting of a counterfeit mark
 4 be destroyed.

5 “(4) When a person is convicted of an offense under
 6 this section, the court, pursuant to sections 3556, 3663A,
 7 and 3664, shall order the person to pay restitution to the
 8 owner of the mark and any other victim of the offense
 9 as an offense against property referred to in section
 10 3663A(c)(1)(A)(ii).

11 “(5) The term ‘victim’, as used in paragraph (4), has
 12 the meaning given that term in section 3663A(a)(2).”.

13 (3) Subsection (e)(1) is amended—

14 (A) by striking subparagraph (A) and in-
 15 serting the following:

16 “(A) a spurious mark—

17 “(i) that is used in connection with
 18 trafficking in any goods, services, labels,
 19 patches, stickers, wrappers, badges, em-
 20 blems, medallions, charms, boxes, con-
 21 tainers, cans, cases, hangtags, documenta-
 22 tion, or packaging of any type or nature;

23 “(ii) that is identical with, or substan-
 24 tially indistinguishable from, a mark reg-
 25 istered on the principal register in the

1 United States Patent and Trademark Of-
2 fice and in use, whether or not the defend-
3 ant knew such mark was so registered;

4 “(iii) that is applied to or used in con-
5 nection with the goods or services for
6 which the mark is registered with the
7 United States Patent and Trademark Of-
8 fice, or is applied to or consists of a label,
9 patch, sticker, wrapper, badge, emblem,
10 medallion, charm, box, container, can,
11 case, hangtag, documentation, or pack-
12 aging of any type or nature that is de-
13 signed, marketed, or otherwise intended to
14 be used on or in connection with the goods
15 or services for which the mark is registered
16 in the United States Patent and Trade-
17 mark Office; and

18 “(iv) the use of which is likely to
19 cause confusion, to cause mistake, or to
20 deceive; or”; and

21 (B) by amending the matter following sub-
22 paragraph (B) to read as follows:

23 “but such term does not include any mark or des-
24 ignation used in connection with goods or services,
25 or a mark or designation applied to labels, patches,

1 stickers, wrappers, badges, emblems, medallions,
 2 charms, boxes, containers, cans, cases, hangtags,
 3 documentation, or packaging of any type or nature
 4 used in connection with such goods or services, of
 5 which the manufacturer or producer was, at the time
 6 of the manufacture or production in question, au-
 7 thorized to use the mark or designation for the type
 8 of goods or services so manufactured or produced,
 9 by the holder of the right to use such mark or des-
 10 ignation.”.

11 (4) Section 2320 is further amended—

12 (A) by redesignating subsection (f) as sub-
 13 section (g); and

14 (B) by inserting after subsection (e) the
 15 following:

16 “(f) Nothing in this section shall entitle the United
 17 States to bring a criminal cause of action under this sec-
 18 tion for the repackaging of genuine goods or services not
 19 intended to deceive or confuse.”.

20 **SEC. 3. SENTENCING GUIDELINES.**

21 (a) REVIEW AND AMENDMENT.—Not later than 180
 22 days after the date of enactment of this Act, the United
 23 States Sentencing Commission, pursuant to its authority
 24 under section 994 of title 28, United States Code, and
 25 in accordance with this section, shall review and, if appro-

1 priate, amend the Federal sentencing guidelines and policy
2 statements applicable to persons convicted of any offense
3 under section 2318 or 2320 of title 18, United States
4 Code.

5 (b) AUTHORIZATION.—The United States Sentencing
6 Commission may amend the Federal sentencing guidelines
7 in accordance with the procedures set forth in section
8 21(a) of the Sentencing Act of 1987 (28 U.S.C. 994 note)
9 as though the authority under that section had not ex-
10 pired.

11 (c) RESPONSIBILITIES OF UNITED STATES SEN-
12 TENCING COMMISSION.—In carrying out this section, the
13 United States Sentencing Commission shall determine
14 whether the definition of “infringement amount” set forth
15 in application note 2 of section 2B5.3 of the Federal sen-
16 tencing guidelines is adequate to address situations in
17 which the defendant has been convicted of one of the of-
18 fenses listed in subsection (a) and the item in which the
19 defendant trafficked was not an infringing item but rather
20 was intended to facilitate infringement, such as an anti-
21 circumvention device, or the item in which the defendant
22 trafficked was infringing and also was intended to facili-
23 tate infringement in another good or service, such as a
24 counterfeit label, documentation, or packaging, taking into

1 account cases such as U.S. v. Sung, 87 F.3d 194 (7th
2 Cir. 1996).

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